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The Ultimate Intrusion on Freedom: A Look at the Federal Circuit's Differing Interpretations on Handcuffing in Custodial Determinations for Miranda Rights

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I. INTRODUCTION

Close your eyes. Imagine that you are walking down the street in your neighborhood. You see a police officer. He approaches you, and asks your name. He tells you that you are not under arrest. He asks you to turn around and put your hands behind your back. He places handcuffs over your wrists, and locks them in place. He tells you he is handcuffing you for his safety. He pats down your clothes to check for weapons. He asks you to sit down on the curb, and cross your ankles. He then begins to question you regarding an event, which took place a few blocks away, shortly before. Do you feel free to leave? Do you believe that you could get up and walk away if you wanted to?

The situation above is one that many Americans have found themselves in. There is only one police officer, you are in a public place, he has not used any “strong-arm” tactics, and you have been sitting there for only a few minutes. But it is likely that you, like most Americans, would feel that you are not free to leave.

The United States Constitution provides citizens with certain protections. Namely, the Fifth Amendment provides that “no person shall be compelled in any criminal case to be a witness against himself.”¹ The Sixth Amendment provides that “[i]n all criminal prosecutions, the accused shall enjoy the right to . . . have assistance of counsel for his defense.”² Additionally, the Fourteenth Amendment extends these protections to individuals against a state.³ In *Miranda v. Arizona*, the Court held that statements made by defendants in police custody will only be admissible at trial if it can be shown that the defendant was informed of

¹ U.S. Const. amend. V.

² U.S. Const. amend. VI.

³ U.S. Const. amend. XIV; *see also* *Malloy v. Hogan*, 378 U.S. 1, 6 (1964) (holding that “the Fifth Amendment’s exception from compulsory self-incrimination is also protected by the Fourteenth Amendment against abridgment by the States.”)

these Constitutionally protected rights, and voluntarily waived them, before making any statements.⁴

Since the decision in *Miranda v. Arizona*, courts have struggled to interpret all aspects of the *Miranda* requirements, particularly, the determination of whether a suspect is “in custody.” The custody determination is an important one, since the warnings must only be provided if the suspect is deemed to be so. The circuit courts have each developed factors to consider in determining whether a suspect is in custody, and most include the consideration of whether the suspect was physically restrained.⁵ Most courts, however, do not properly consider the effect that being handcuffed has on a suspect, and his⁶ belief in whether or not he is free to leave the situation.

Courts need to create a bright line rule that being handcuffed automatically creates a custodial situation requiring suspects to be provided with *Miranda* rights. Based on the language the Supreme Court has used to describe when a suspect is considered “in custody,” it is unrealistic that a reasonable person who is handcuffed would ever fall outside the scope of being in “custody.”⁷ Implementing this rule will provide suspects with the rights they are guaranteed, and it will not substantially interfere with law enforcement’s ability to perform its job effectively.

This Comment discusses the current view that circuit courts have taken on the role that handcuffing plays in custody determinations. Part II of this Comment details the history of the

⁴ *Miranda v. Arizona*, 384 U.S. 436 (1966).

⁵ *United States v. Aldridge*, 664 F.3d 705 (8th Cir. 2011) (listing factors considered in a custody determination); *United States v. Craighead*, 539 F.3d 1073, 1084 (9th Cir. 2008) (same); *United States v. Thompson*, 496 F.3d 807, 810–11 (7th Cir. 2007) (same).

⁶ For the remainder of this Comment I will use “his” and “he” for the sake of brevity, but please note that “his” is representative of “his/hers” and “he” is representative of “he/she.”

⁷ *California v. Beheler*, 463 U.S. 1121, 1125 (1983) (“[T]he ultimate inquiry is simply whether there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.”) (internal quotation marks omitted).

Miranda decision, and briefly addresses the conjunction of *Miranda* with the Supreme Court's decision in *Terry v. Ohio*.⁸ It will outline how courts determine whether a suspect is in custody, and how handcuffing is considered in the custody determination. Part III then addresses the implications of implementing a bright line rule that handcuffing automatically creates a custodial situation. It will hypothesize about the reasons that the Court has not already implemented such a rule, and will discuss the ramifications of the rule in practical applications. Ultimately, this Comment proposes that the best way to factor handcuffing into a *Miranda* determination, is not to merely consider it in the totality of the circumstances. A totality of the circumstances should still be used in all situations not involving handcuffing, however, handcuffing should automatically escalate a detention to a custodial situation.

II. BACKGROUND

A. A Look at *Miranda v. Arizona* and Related Cases

In March of 1963, Ernesto Miranda was arrested at his home and taken into police custody.⁹ He was brought into an interrogation room, questioned by two officers, and signed a written confession.¹⁰ The officers did not advise him of his right to have an attorney present, yet his signed confession stated that he had made his confession voluntarily and with full knowledge of his legal rights.¹¹ At his jury trial, Miranda's written confession was admitted into evidence, and officers testified to a prior oral confession made by Miranda during the interrogation.¹² Miranda was subsequently found guilty of kidnapping and rape, and sentenced to

⁸ *Terry v. Ohio*, 392 U.S. 1 (1968).

⁹ *Miranda* 384 U.S. at 491.

¹⁰ *Id.* at 491–92.

¹¹ *Id.*

¹² *Id.* at 492

twenty to thirty years concurrently on each count.¹³ On appeal, the Supreme Court of Arizona held there was no violation of Miranda’s rights in obtaining the confession.¹⁴ Specifically, the Court focused on the fact that Miranda never specifically requested counsel.¹⁵

The United States Supreme Court found that there was no intelligent waiver of his rights, given that he was never apprised of them.¹⁶ In doing so, the Court held that “when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning,” he must be advised of his constitutionally protected rights, namely: 1) the right to remain silent,¹⁷ 2) the right to be advised that anything he says can be used against him in court,¹⁸ 3) the right to have an attorney present during questioning,¹⁹ and 4) the right to have an attorney appointed if he cannot afford one.²⁰ A suspect may waive his rights, so long as he does so “voluntarily, knowingly and intelligently.”²¹ Unless a suspect gives a clear expression of his intention to invoke a right, any subsequent voluntary statements that are made can be used against him.²² Suspects are also not required to receive *Miranda* rights if they are in custody, but are not subjected to “interrogation.”²³ However this Comment will focus on the determination of “custody,” not the determination of “interrogation.”

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Miranda* 384 U.S. at 492.

¹⁶ *Id.*

¹⁷ *Id.* at 467–68.

¹⁸ *Id.* at 469.

¹⁹ *Id.* at 470–71.

²⁰ *Id.* at 473.

²¹ *Miranda* 384 U.S. at 444, 478–79.

²² *Berghuis v. Thompson*, 560 U.S. 370 (2010).

²³ *Rhode Island v. Innis*, 446 U.S. 291, 300 (1980) (“the special procedural safeguards outlined in *Miranda* are required not where a suspect is simply taken into custody, but rather where a suspect in custody is subjected to interrogation.”)

Since 1966, many subsequent decisions have clarified and extended the boundaries of *Miranda*.²⁴ In *Edwards v. Arizona*, a defendant was arrested in his home for robbery, burglary, and first-degree murder.²⁵ At the police station, he was informed of his *Miranda* rights, and stated that he understood them and was willing to submit to questioning.²⁶ After being told that another suspect had implicated him in the crime, defendant denied being involved, and then sought to “make a deal.”²⁷ After speaking with a local attorney, defendant invoked his *Miranda* rights and declined to make a deal with the officers without an attorney present.²⁸ The next morning, two detectives came to interview him and he repeated his wishes not to speak with them, but he was told he “had to.”²⁹ He shortly after implicated himself in the crime being investigated.³⁰ The Court held that when a suspect has invoked a *Miranda* right, he is not subject to further questioning until counsel has been made available, unless the suspect initiates the communication.³¹

In *Maryland v. Shatzer*, an incarcerated defendant was questioned by a police detective about allegations that he had sexually abused his son.³² Defendant invoked his *Miranda* right to have counsel present during questioning, and the interview was terminated.³³ Three years later, another detective reopened the case and attempted to interrogate defendant.³⁴ Defendant waived his *Miranda* rights and made incriminating statements.³⁵ The trial court refused to suppress the

²⁴ See *Coyote v. United States*, 380 F.2d 305 (10th Cir. 1967)(Discussing factors to be considered when examining the validity of a suspect’s waiver); *Fare v. Michael C.*, 442 U.S. 707 (1979) (Holding that the validity of a juvenile’s waiver of *Miranda* rights is to be considered in the totality of the circumstances).

²⁵ *Edwards v. Arizona*, 451 U.S. 477, 478 (1981).

²⁶ *Id.*

²⁷ *Id.* at 479.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Edwards*, 451 U.S. at 484–85.

³² *Maryland v. Shatzer*, 559 U.S. 98 (2010).

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

statements, and held that *Edwards v. Arizona* did not apply because there was a break in *Miranda* custody before the second interrogation.³⁶ Defendant was subsequently convicted of sexual child abuse.³⁷ The Supreme Court affirmed defendant's conviction, and held that because the break in *Miranda* custody lasted more than two weeks, *Edwards* did not mandate that defendant's statements be suppressed.³⁸

There has also been significant ambiguity surrounding the conjunction of *Miranda* and the Supreme Court case *Terry v. Ohio*.³⁹ *Terry* and subsequent related decisions have held that officers have a narrow authority to briefly detain a suspect, search him for weapons, and question him regarding identity without triggering the need for *Miranda* rights to be provided.⁴⁰ Although not the focus of this Comment, it is worth noting that there has been some disagreement in the Circuit courts over whether a suspect in a reasonable *Terry* stop can ever simultaneously be in custody for *Miranda* purposes.⁴¹

In *New York v. Quarles*, the Supreme Court recognized a public safety exception to the *Miranda* requirements.⁴² In *Quarles*, a woman claimed that she had been raped, and told police that her assailant had just entered a supermarket and was carrying a gun.⁴³ An officer apprehended a suspect in a nearby supermarket and upon frisking him, noticed an empty gun holster.⁴⁴ After handcuffing defendant, the officer asked him where the gun was.⁴⁵ Defendant

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Shatzer*, 559 U.S. 98.

³⁹ *Terry v. Ohio*, 392 U.S. 1 (1968).

⁴⁰ *Id.*; *United States v. Camacho*, 506 F.2d 594 (9th Cir. 1974) (holding an officer's request for identification did not require *Miranda* to be given).

⁴¹ *See United States v. Kim*, 292 F.3d 969, 976 (9th Cir. 2002) ("whether an individual detained during the execution of a search warrant has been unreasonably seized for Fourth Amendment purposes and whether that individual is 'in custody' for *Miranda* purposes are two different issues"); *United States v. Pelayo-Ruelas*, 345 F.3d 589, 592 (8th Cir. 2003) ("[n]o *Miranda* warning is necessary for persons detained for a *Terry* stop") (citation omitted).

⁴² *New York v. Quarles*, 467 U.S. 649 (1984).

⁴³ *Id.* at 651–52.

⁴⁴ *Id.* at 652.

noded in the direction of nearby empty cartons, and the officer retrieved the gun.⁴⁶ Defendant indicated he was willing to answer questions without an attorney, and told the officer that he owned the gun and where he had purchased it.⁴⁷ Defendant was subsequently convicted of criminal possession of a weapon.⁴⁸ The trial court held the statement was inadmissible against defendant at trial, because he had been in custody under *Miranda* and had not been informed of his rights before being questioned about where the gun was located.⁴⁹ The Supreme Court held the statement was admissible against defendant.⁵⁰ The Court held that in situations that pose “a threat to public safety,” the need for answers outweighs the need for the Fifth Amendment’s protections against self-incrimination.⁵¹ Moreover, the Court noted, “the availability of the public safety exception does not depend upon the motivation of the individual officers involved.”⁵²

Additionally, in 1968 Congress passed 18 U.S.C. §3501 as part of the Omnibus Crime Control and Safe Streets Act, attempting to overrule *Miranda*.⁵³ The statute required courts to admit confessions made by criminal defendants, regardless of whether *Miranda* rights were provided, if the statement was “voluntarily given.”⁵⁴ However, the legislation was largely ignored, and was eventually struck down in *Dickerson v. United States*, where the Court held that *Miranda* was constitutional, and could not be overruled by Congress.⁵⁵

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Quarles*, 467 U.S. 649.

⁴⁹ *Id.* at 652–53.

⁵⁰ *Id.* at 659–60.

⁵¹ *Id.* at 657.

⁵² *Id.* at 649–50.

⁵³ Joanna Wright, *Applying Miranda's Public Safety Exception to Dzhokhar Tsarnaev: Restricting Criminal Procedure Rights by Expanding Judicial Exceptions*, 113 COLUM. L. REV. SIDEBAR 136, 148 (2013).

⁵⁴ 18 U.S.C. §3501.

⁵⁵ *Dickerson v. United States*, 530 U.S. 428, 444 (2000).

B. Clarifying Miranda v. Arizona

Police officers are required to read a suspect his *Miranda* rights when he has been “taken into custody or otherwise deprived of his freedom of action in any significant way.”⁵⁶ Since a suspect is not required to be read *Miranda* rights if he is not “in custody,” the determination of whether or not a suspect is in custody is pivotal.⁵⁷ The Court in *Thompson v. Keohane* noted that there are two inquiries essential to determining custody: 1) “what were the circumstances surrounding the interrogation,” and 2) “would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave.”⁵⁸ The Court noted that the first inquiry is distinctly factual, while the second inquiry calls for “application of the controlling legal standard to the historical facts.”⁵⁹

Since the *Miranda* decision, courts have struggled to define what constitutes custody.⁶⁰ In *California v. Beheler*, defendant and his stepbrother attempted to steal drugs from a woman who was selling them in the parking lot of a liquor store.⁶¹ When the woman refused to comply, defendant’s stepbrother killed her.⁶² Defendant shortly thereafter called the police, and he later agreed to accompany the police to the station house.⁶³ Defendant was informed he was not under arrest, and agreed to talk to the police about the murder.⁶⁴ Defendant was never advised of his *Miranda* rights, and the interview lasted less than thirty minutes before defendant was told he could return home.⁶⁵ Five days later, defendant was arrested in connection with the murder.⁶⁶

⁵⁶ *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

⁵⁷ *See Minnesota v. Murphy*, 465 U.S. 420, 431 (1984) (“[t]he mere fact that an investigation has focused on a suspect does not trigger the need for *Miranda* warnings in noncustodial settings.”)

⁵⁸ *Thompson v. Keohane*, 516 U.S. 99, 112 (1995).

⁵⁹ *Id.*

⁶⁰ *Oregon v. Elstad*, 470 U.S. 298, 309 (1985) (“Unfortunately, the task of defining ‘custody’ is a slippery one.”)

⁶¹ *California v. Beheler*, 463 U.S. 1121, 1122 (1983).

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

The Court explained that, “the ultimate inquiry is simply whether there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.”⁶⁷ The Court found that defendant had not been deprived of his freedom in any significant way, and thus held that he was not in custody and was not required to be provided with his *Miranda* rights during his first interview with police.⁶⁸

In *Berkemer v. McCarty*, an officer asked defendant during a traffic stop whether he had used any intoxicants, then arrested him after he admitted he had consumed alcohol and used marijuana.⁶⁹ At the jail, defendant responded affirmatively to questions about whether he had been drinking, despite never having been informed of his *Miranda* rights.⁷⁰ The Court determined that defendant’s statements at the jail were inadmissible because he was clearly “in custody.”⁷¹ However, the Court noted that defendant was not “in custody” during the initial questioning by the officer during his traffic stop.⁷² The Court noted that although the officer had apparently decided as soon as defendant exited his vehicle that he would be taken into custody, the officer never communicated that to defendant.⁷³ The Court explained that “[a] policeman’s unarticulated plan has no bearing on the question whether a suspect was ‘in custody’ at a particular time; the only relevant inquiry is how a reasonable man in the suspect’s position would have understood his situation.”⁷⁴ An objective test is used to determine custody, so as not to place the burden on officers to anticipate the “frailties and idiosyncrasies of every person whom

⁶⁶ *Id.*

⁶⁷ *Beheler*, 463 U.S. at 1125.

⁶⁸ *Id.* at 1123.

⁶⁹ *Berkemer v. McCarty*, 468 U.S. 420, 423 (1984).

⁷⁰ *Id.* at 424.

⁷¹ *Id.* at 421.

⁷² *Id.*

⁷³ *Id.* at 421.

⁷⁴ *Id.* at 421–422.

they question.”⁷⁵ Therefore, officers must give *Miranda* warnings based on whether the person they have detained would find their situation comparable to a formal arrest, not based on a self-assessment of their actions.⁷⁶

C. Factors Used to Determine Custody

Recently in *Howes v. Fields*, the Supreme Court elaborated on the meaning of custody.⁷⁷ They noted that in order to determine how a suspect would interpret his freedom of movement, the courts must look at “all of the circumstances surrounding the interrogation.”⁷⁸ Relevant factors to consider included the duration of the questioning, the location of the questioning, statements made during the interview, the presence or absence of physical restraints and the release of the suspect at the end of questioning.⁷⁹ The Court pointed out that “[n]ot all restraints on freedom of movement amount to custody . . . [w]e have declined to accord talismanic power to the freedom-of-movement inquiry.”⁸⁰ In *Maryland v. Shatzer*, the Court noted, “the freedom-of-movement test identifies only a necessary and not a sufficient condition for *Miranda* custody.”⁸¹ Additionally, in *Berkemer*, the Court identified two factors as particularly relevant: 1) whether a reasonable person would have understood his detention was not likely going to be “temporary and brief,” and 2) whether a reasonable person under the circumstances would feel he was “completely at the mercy of police.”⁸²

⁷⁵ *Berkemer*, 468 U.S. at 442 n. 35 (internal quotations omitted). *See also* *Stansbury v. California*, 511 U.S. 318, 323 (1994) (“[o]ur decisions make clear that the initial determination of custody depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned.”)

⁷⁶ *United States v. Newton*, 369 F.3d 659, 672 (2d Cir. 2004).

⁷⁷ *Howes v. Fields*, 132 S. Ct. 1181 (2012).

⁷⁸ *Id.* at 1189.

⁷⁹ *Id.*

⁸⁰ *Id.* (internal quotation marks omitted).

⁸¹ *Maryland v. Shatzer*, 559 U.S. 98, 112–13 (internal citations omitted) (internal quotation marks omitted).

⁸² *Berkemer v. McCarty*, 468 U.S. 420, 437–38 (1984).

The Circuit Courts have developed their own factors to consider when looking at the totality of the circumstances for determining whether custody existed. For example, in *United States v. Aldridge*, the Eighth Circuit considered six factors:

(1) whether the suspect was informed at the time of questioning that the questioning was voluntary, that the suspect was free to leave or request the officers to do so, or that the suspect was not considered under arrest; (2) whether the suspect possessed unrestrained freedom of movement during questioning; (3) whether the suspect initiated contact with authorities or voluntarily acquiesced to official requests to respond to questions; (4) whether strong arm tactics or deceptive stratagems were employed during questioning; (5) whether the atmosphere of the questioning was police-dominated; or, (6) whether the suspect was placed under arrest at the termination of the questioning.⁸³

In *United States v. Craighead*, the Ninth Circuit considered the following four factors: “(1) the number of law enforcement personnel and whether they were armed; (2) whether the suspect was at any point restrained, either by physical force or by threats; (3) whether the suspect was isolated from others; and (4) whether the suspect was informed that he was free to leave or terminate the interview, and the context in which any such statements were made.”⁸⁴

Furthermore, in *United States v. Thompson*, the Seventh Circuit noted that they consider factors such as, “whether the suspect consented to speak with the officers; whether the officers informed the individual that he was not under arrest and was free to leave; whether the individual was moved to another area; whether there was a threatening presence of several officers and a display of weapons or physical force; and whether the officers' tone of voice was such that their requests were likely to be obeyed.”⁸⁵

⁸³ *United States v. Aldridge*, 664 F.3d 705, 711 (8th Cir. 2011).

⁸⁴ *United States v. Craighead*, 539 F.3d 1073, 1084 (9th Cir. 2008).

⁸⁵ *United States v. Thompson*, 496 F.3d 807, 810–11 (7th Cir. 2007).

D. Review of Case Law Applying Custodial Factors

In the fifty years since *Miranda*, courts have shaped the guidelines for what situations constitute custody. In *United States v. Mandujano*, a plurality of the Court held that a witness testifying before a grand jury is not considered “in custody” and therefore does not need to be read his *Miranda* rights before being questioned.⁸⁶ In *Pasdon v. City of Peabody*, the First Circuit held that a defendant was not in custody when an officer asked him questions over the telephone.⁸⁷ Defendants are generally not in custody when the defendant is believed to be only a witness, given the lack of suspicion by police.⁸⁸ Defendants are also often considered not in custody when they voluntarily come to the police station for an interview.⁸⁹

In *Yarborough v. Alvarado* the Court found a 17-year-old-suspect had not been in custody when police conducted a non-*Mirandized* interview lasting two hours long at the police station, where he was not informed he was free to leave.⁹⁰ The Court focused on the fact his parents had transported him to the interview and remained in the station lobby during the interview, the police were not coercive and asked if he wanted to take a break, and the suspect left and returned home after the interview.⁹¹

In *United States v. Young*, a defendant was questioned in the back of an unmarked police car.⁹² Defendant was told she was free to leave the interview, but detective later told her that “he could arrest her” for having intercepted a package full of drugs.⁹³ The Tenth Circuit held that

⁸⁶ *States v. Mandujano*, 425 U.S. 564, 96 S.Ct. 1768 (1976).

⁸⁷ *Pasdon v. City of Peabody*, 417 F.3d 225 (1st Cir. 2005).

⁸⁸ *United States v. Strickland*, 493 F.2d 182 (5th Cir. 1974) (defendant was not in custody when he was being questioned not as a suspect of a crime, but because he had been shot).

⁸⁹ *See Oregon v. Mathiason*, 429 U.S. 492 (1977); *McCown v. Callahan*, 726 F.2d 1, 5 (1st Cir. 1984) (defendant not in custody when he voluntarily went to sheriff’s station).

⁹⁰ *Yarborough v. Alvarado*, 541 U.S. 652 (2004).

⁹¹ *Id.*

⁹² *United States v. Jones*, 523 F.3d 1235, 1238 (10th Cir. 2008).

⁹³ *Id.*

despite the detective's statement, defendant was not in custody because she was told she was free to leave, and her liberty was not restricted to the degree associated with a formal arrest.⁹⁴

In *Mathis v. United States*, an incarcerated defendant was found to be in custody when internal revenue agents questioned him.⁹⁵ In doing so, the Court “reject[ed] the contention that tax investigations are immune from *Miranda* requirements for warnings to be given a person in custody”⁹⁶ Defendants are sometimes required *Miranda* rights when an incarcerated suspect is isolated from the general prison population and questioned about conduct that occurred outside the prison.⁹⁷ In *United States v. New*, the Eighth Circuit held a defendant was not in custody when a federal agent interviewed him in his hospital room after a car accident.⁹⁸ The Court noted that despite the fact that defendant was physically constrained to his hospital bed, the agent interviewing him placed no restraints on defendant himself.⁹⁹ Defendants are usually found to be in non-custodial situations when in their home (especially if with friends or family), and in public places.¹⁰⁰ Defendants have also been found not to be in custody when being questioned by border patrol while trying to enter the United States, or customs officers at an international airport.¹⁰¹ The Court in *Miranda* exempted on-the-scene questioning from custodial situations

⁹⁴ *Id.* at 1244.

⁹⁵ *Mathis v. United States*, 391 U.S. 1 (1968).

⁹⁶ *Id.* at 4.

⁹⁷ *Howes v. Fields*, 132 S. Ct. 1181, 1187 (2012).

⁹⁸ *United States v. New*, 491 F.3d 369, 373 (8th Cir. 2007).

⁹⁹ *Id.* at 374.

¹⁰⁰ *See Beckwith v. United States*, 425 U.S. 341 (1976) (defendant was not in custody when interviewed in his private home by Internal Revenue Agents); *United States v. Parker*, 262 F.3d 415 (4th Cir. 2001) (suspect who was questioned by law enforcement officers in the bedroom of her residence was not in custody); *United States v. Messina*, 388 F.2d 393 (2d Cir. 1968) (defendant was not in custody when he was interviewed by law enforcement officers in a park and a restaurant); *United States v. Charpentier*, 438 F.2d 721 (10th Cir. 1971) (defendant was not in custody when interviewed in office building).

¹⁰¹ *See U.S. v. Kiam*, 432 F.3d 524 (3d Cir. 2006), cert. denied, 126 S. Ct. 1453 (U.S. 2006); *U.S. v. St. Vallier*, 404 Fed. Appx. 651 (3d Cir. 2010).

requiring the warning.¹⁰² Despite much settled case law, there is still ambiguity about the role of handcuffing in determining custody.

E. Handcuffing as a Custodial Factor in the Circuit Courts

The circuit courts have different opinions on the role that handcuffing a suspect should play in determination of custody. Some courts have taken the opinion that handcuffing can automatically create a custodial situation, or at the very least, it is an extremely strong indication of a custodial situation.¹⁰³

1. United States v. Newton and the Second Circuit's View of Handcuffs

In *United States v. Newton*, the Second Circuit considered the role that handcuffs have on a custody determination. In 2001, police responded to a report from a social worker that defendant Newton had threatened to kill his mother and her husband, with whom he resided.¹⁰⁴ Defendant's mother reported that, despite her son's parole, he kept a gun in a shoebox by the front door.¹⁰⁵ Officers arrived at the home of defendant's mother to conduct a "safety search."¹⁰⁶ Defendant was handcuffed, and advised that he was being restrained for his safety and the safety of the officers, but was not read his *Miranda* rights.¹⁰⁷ Defendant was asked if he had any contraband in the house, and responded, "only what is in the box."¹⁰⁸ Officers found a loaded

¹⁰² *Miranda v. Arizona*, 384 U.S. 436, 477 (1966).

¹⁰³ Compare *United States v. Newton*, 369 F.3d 659, 672, 676 (2d Cir. 2004) (finding that a reasonable person who is handcuffed would find his movement restrained in a way comparable to a formal arrest), with *United States v. Bautista*, 684 F.2d 1286, 1292 (9th Cir.1982) (defendant who was handcuffed during his detention was not in custody).

¹⁰⁴ *Newton*, 369 F.3d at 663.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

firearm, along with ammunition, in the box.¹⁰⁹ An officer asked defendant why he had a firearm while on parole, and defendant stated that the gun was for protection but that it did not work.¹¹⁰ Defendant was found guilty of being a felon in possession of a firearm.¹¹¹

The district court concluded that defendant was not in custody when he made the statements because his detention was “pursuant to a lawful search rather than an arrest.”¹¹² On appeal the government argued that defendant did not need to be provided with *Miranda* warnings because he was not in custody, and in the alternative, if he was in custody, the public safety exception applied.¹¹³ The Second Circuit included a brief discussion of how the Supreme Court has resisted efforts to focus attention on the “coercive pressures” of a situation, instead of custodial status of the person being questioned.¹¹⁴ The court noted that had they chosen to view the situation as some other circuit courts have, as an issue of Fourth Amendment reasonableness of the restraint, they would find for the government.¹¹⁵ However, they believe the inquiry requires a focus on whether a reasonable person in defendant’s situation would have understood his restraint to be comparable to a formal arrest.¹¹⁶

The court importantly noted that “[h]andcuffs are generally recognized as a hallmark of a formal arrest.”¹¹⁷ It noted that:

[A] reasonable person finding himself placed in handcuffs by the police would ordinarily conclude that his detention would not necessarily be temporary or brief and that his movements were not totally under the control of the police—in other words, that he was

¹⁰⁹ *Id.*

¹¹⁰ *Newton*, 369 F.3d at 663.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.* at 668.

¹¹⁴ *Id.* at 671; *See Oregon v. Mathiason*, 429 U.S. 492 (1977).

¹¹⁵ *Newton*, 369 F.3d at 673–74; *See United States v. Pelayo–Ruelas*, 345 F.3d 589, 592 (8th Cir.2003); *United States v. Trueber*, 238 F.3d 79, 92 (1st Cir.2001); *United States v. Leshuk*, 65 F.3d 1105, 1110 (4th Cir.1995).

¹¹⁶ *Newton*, 369 F.3d at 673.

¹¹⁷ *Id.* at 676.

restrained to a degree normally associated with formal arrest and, therefore, in custody.¹¹⁸

The court noted that defendant was specifically told that he was not being placed under arrest, but that the advice did not carry the same weight as the use of handcuffs.¹¹⁹ The court held that, despite the detention, being within his own home, a reasonable person in the same circumstance would have considered his movement restricted to the degree associated with a formal arrest “as long as the handcuffs remained in place.”¹²⁰

2. Handcuffing Can Create a Custodial Situation

Other circuit courts have followed in the Second Circuit’s path, and found handcuffing an extremely persuasive consideration when determining custody. In *United States v. Cowan*, police received information from an informant that crack cocaine was being sold out of an apartment.¹²¹ Officers obtained a search warrant for the target apartment, and upon arrival observed defendant fleeing to a nearby apartment, when he was subsequently arrested.¹²² Defendant was subsequently handcuffed and patted down while a detective questioned him.¹²³ The Eighth Circuit held that a defendant was in custody, because a reasonable person in Cowan’s position would not have felt he was free to leave.¹²⁴

In *United States v. Smith*, a detective received information from an informant that three suspicious guests were staying at a nearby motel.¹²⁵ Believing there to be drug activity taking

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *United States v. Cowan*, 674 F.3d 947, 950 (8th Cir.), *reh’g denied* (May 11, 2012), *cert. denied*. (2012).

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.* at 957 (“we conclude Cowan was in custody because a reasonable person in Cowan’s position would not have felt free to end the questioning and leave.”)

¹²⁵ *United States v. Smith*, 3 F.3d 1088, 1091 (7th Cir. 1993).

place, police officers reserved rooms at the motel to conduct surveillance.¹²⁶ Police followed the suspects when they left the motel in a cab, and subsequently pulled the cab over to make arrests.¹²⁷ Defendants were removed from the cab, handcuffed, seated on the grass by the side of the road, and questioned.¹²⁸ The Seventh Circuit held that defendant (whose appeal centered around him not being provided *Miranda* rights) was in custody because there was a sufficient curtailment of his freedom of action.¹²⁹

In *United States v. Cavazos*, government agents were executing a search warrant of defendant's home.¹³⁰ When the agents entered defendant's home, they immediately handcuffed defendant and separated him from his family.¹³¹ The Fifth Circuit held that defendant was in custody because he had been handcuffed, there were more than a dozen officers, and he was interrogated for at least an hour.¹³² The court noted that "[w]hile the handcuffs were removed prior to interrogation, the experience of being singled out and handcuffed would color a reasonable person's perception of the situation."¹³³

Similarly, in *United States v. Revels*, police were executing a search warrant at defendant's home in the early morning.¹³⁴ The police forcibly entered the residence, handcuffed defendant and separated her from her boyfriend and children.¹³⁵ The Tenth Circuit determined defendant was in custody and should have been provided *Miranda* rights.¹³⁶

¹²⁶ *Id.* at 1092.

¹²⁷ *Id.*

¹²⁸ *Id.* at 1092–1093.

¹²⁹ *Id.* at 1098.

¹³⁰ *United States v. Cavazos*, 668 F.3d 190, 192 (5th Cir. 2012).

¹³¹ *Id.*

¹³² *Id.* at 194–95.

¹³³ *Id.* at 195.

¹³⁴ *United States v. Revels*, 510 F.3d 1269, 1270 (10th Cir. 2007).

¹³⁵ *Id.* at 1275.

¹³⁶ *Id.*

3. Handcuffing Does Not Create a Custodial Situation

Some circuit courts, on the other hand, have found suspects who were handcuffed were not in custody for *Miranda* purposes. In *United States v. Bautista*, defendant was stopped for questioning in connection to a bank robbery that had just taken place.¹³⁷ An officer placed defendant in handcuffs, which he justified based on the fact that one officer would be left alone with the suspects who appeared “extremely nervous” and were “pacing back and forth.”¹³⁸ The court held that the use of handcuffs did not elevate the detention to custody for *Miranda* purposes, and noted, “[a] brief but complete restriction of liberty, if not excessive under the circumstances, is permissible during a *Terry* stop and does not necessarily convert the stop into an arrest.”¹³⁹

In *United States v. Fornia-Castillo*, Drug Enforcement Administration (“DEA”) Task Force agents conducted surveillance of suspected drug conspirators.¹⁴⁰ Agents followed two men from the surveillance location and observed the men transferring what the agents believed to be drugs from their car into defendant’s car.¹⁴¹ Officers pulled defendant over, searched his car and found a large amount of cash.¹⁴² Defendant was frisked, handcuffed and questioned.¹⁴³ The handcuffs were removed once fellow Task Agents arrived.¹⁴⁴ The First Circuit held that handcuffing defendant did not elevate the situation to a custodial one.¹⁴⁵

¹³⁷ *United States v. Bautista*, 684 F.2d 1286, 1287 (9th Cir. 1982).

¹³⁸ *Id.* at 1288.

¹³⁹ *Id.* at 1289. The 9th Circuit did acknowledge that “handcuffing substantially aggravates the intrusiveness of an otherwise routine investigatory detention.” *Id.*

¹⁴⁰ *United States v. Fornia-Castillo*, 408 F.3d 52, 56 (1st Cir. 2005).

¹⁴¹ *Id.* at 57.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 64–65. The First Circuit’s conclusion in this case is surprising given that it has previously acknowledged, “the use of handcuffs [is] one of the most recognizable indicia of a traditional arrest.” *United States v. Acosta-Colon*, 157 F.3d 9, 18 (1st Cir. 1998).

In *United States v. Leshuk*, the Fourth Circuit found that a defendant who had been questioned without *Miranda* rights being provided was not in custody.¹⁴⁶ Although defendant in this case was not handcuffed, the court noted in its holding, “we have concluded that drawing weapons, handcuffing a suspect, placing a suspect in a patrol car for questioning, or using or threatening to use force does not necessarily elevate a lawful stop into a custodial arrest for *Miranda* purposes.”¹⁴⁷

F. Judge Rovner’s Concurrence in Rabin v. Flynn

In *Rabin v. Flynn*, the Seventh Circuit, in considering excessive force in violation of the Fourth Amendment and qualified immunity, found that handcuffing a suspect and placing him in a squad car likely did not constitute an arrest.¹⁴⁸ Although the case itself is outside the scope of this Comment, in his concurrence, Judge Rovner provided a lengthy insight into the use of handcuffs.¹⁴⁹ Rover points out that when you see someone in handcuffs, you automatically think “that person is going to jail,” and noted that no one placed in handcuffs thinks they are free to leave.¹⁵⁰ Rovner noted that short of actually putting someone behind bars,

[T]here is no more concrete and effective way to limit his movement and thereby deprive him of his physical freedom. Once in cuffs, a person's ability to terminate the encounter and continue on his way depends not only on cooperating with the officer and dispelling his suspicions, but on the officer's willingness to remove the handcuffs and restore his liberty.¹⁵¹

Rovner included a discussion of the Seventh Circuit’s decision in *United States v. Glenna*, where the Seventh Circuit recognized a limited set of circumstances where a police

¹⁴⁶ *United States v. Leshuk*, 65 F.3d 1105 (4th Cir. 1995).

¹⁴⁷ *Id.* at 1109–10.

¹⁴⁸ *Rabin v. Flynn*, 725 F.3d 628 (7th Cir. 2013).

¹⁴⁹ *Rabin*, 725 F.3d at 637 (Rovner, J., concurring).

¹⁵⁰ *Id.* (Rovner, J., concurring).

¹⁵¹ *Id.* (Rovner, J., concurring).

officer may handcuff a suspect without converting a *Terry* stop into a de facto arrest.¹⁵² In *Glenna*, an officer asked defendant to produce identification, and upon observing defendant reaching into his pocket he noticed a bulge in the pocket, and handcuffed suspect before frisking him.¹⁵³ Rovner noted that the Seventh Circuit has relied on a “risk of flight” to justify handcuffing a suspect while he is being detained and questioned.¹⁵⁴ Rovner ends his concurrence by again noting that, “[s]hort of jailing a person, I can imagine no greater intrusion on his freedom than placing him in manacles and installing him in the back of a caged police car.”¹⁵⁵

III. ANALYSIS

Handcuffing should automatically create a custodial situation requiring *Miranda* rights to be provided. Imagine yourself in the shoes of the defendants in the cases discussed above. Regardless of whether you are sitting in your living room, on a sidewalk curb, or in a police interrogation room, once you are handcuffed, do you feel free to leave? Do you feel you have been deprived of your freedom in a significant way?¹⁵⁶ Do you feel you are being restrained to a degree association with a formal arrest?¹⁵⁷ The answers to these questions seem obvious. So why is it that the courts have refused to hold that handcuffing a suspect categorically creates a custodial situation?

¹⁵² *Id.* at 638; *United States v. Glenna*, 878 F.2d 967 (7th Cir.1989). The court in *Glenna* did acknowledge, “handcuffs are restraints on freedom of movement *normally* associated with arrest.” *Id.* at 972.

¹⁵³ *Glenna*, 878 F.2d at 969.

¹⁵⁴ *Rabin*, 725 F.3d at 639 (Rovner, J., concurring).

¹⁵⁵ *Id.* at 642 (Rovner, J. concurring).

¹⁵⁶ *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

¹⁵⁷ *California v. Beheler*, 463 U.S. 1121, 1125 (1983).

A. The Courts' Hesitations

The reason why the courts refused to give “talismanic power” to handcuffing a suspect is likely because they fear what the ramifications will be.¹⁵⁸ The rules of *Miranda* were created to prevent coercive police practices that had “a heavy toll on individual liberty and trades on the weakness of individuals.”¹⁵⁹ However, courts must also balance the need for individual protection against the “efficient enforcement of our criminal laws.”¹⁶⁰ The *Miranda* Court noted that they have always given “ample latitude to law enforcement agencies in the legitimate exercise of their duties.”¹⁶¹ Perhaps the courts worry that by creating a bright line rule that handcuffing a suspect creates a custodial situation, it will interfere with police officers’ ability to effectively enforce our criminal laws. However, in *Miranda*’s decision, the Court outlines at length the history of an individual’s rights against self-incrimination, and makes clear that they are affording individuals no more power than what is already given to them in the Constitution.¹⁶² Regardless of the impact that being required to provide *Miranda* rights may have on an investigation, there is no sound rationale for refusing to view handcuffing as a factor that automatically creates a custodial situation.

B. A Bright Line Rule

A practical analysis of implementing a bright line rule – that handcuffing creates a custodial situation – reveals that there likely will not be much of a difference in the outcomes of cases. This can be shown using the factors, discussed above, that the Eighth Circuit considers in

¹⁵⁸ *Howes v. Fields*, 132 S. Ct. 1181, 1189 (2012).

¹⁵⁹ *Miranda* 384 U.S. at 455.

¹⁶⁰ *Id.* at 467.

¹⁶¹ *Id.* at 481.

¹⁶² *Id.* at 459–479.

determining whether a suspect is in custody.¹⁶³ If a suspect was handcuffed, he is automatically in a custodial situation. Factor one may weigh in favor of non-custody if he was told he was not under arrest, however it is unlikely that while being handcuffed, a suspect was simultaneously told that he was free to leave.¹⁶⁴ The second factor, whether the suspect possessed unrestrained freedom of movement, would likely weigh in favor of custody, because he does not have free movement during questioning.¹⁶⁵ The third factor, whether the suspect initiated contact, is also likely to fall in favor of custody, because logically police would have little reason to handcuff a suspect who has voluntarily initiated contact unless they are making an arrest.¹⁶⁶ The fourth factor, whether strong-arm tactics were employed, could be argued to be irrelevant, because handcuffing a suspect can be considered a “strong arm tactic” in-and-of itself.¹⁶⁷ The fifth factor, whether the atmosphere of questioning was police-dominated, seems to be irrelevant, because regardless of whether there were one or fifty officers surrounding the suspect, his ability to move free from restraint remains hindered from the handcuffs.¹⁶⁸ Lastly, whether the suspect is placed under arrest at the termination of questioning, also seems to be irrelevant, because what happens *after* the questioning has no bearing on whether the suspect was in custody during the questioning.¹⁶⁹

Applying the handcuffing custodial rule to the Ninth Circuit’s factors discussed above, we come to a similar conclusion.¹⁷⁰ First, an argument can once again be made that the number of law enforcement personnel, or the presence of weapons, is irrelevant, because as discussed above, regardless of the surrounding circumstances, they have no bearing on a suspect’s ability

¹⁶³ *United States v. Aldridge*, 664 F.3d 705, 711 (8th Cir. 2011).

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Aldridge*, 664 F.3d at 711.

¹⁷⁰ *United States v. Craighead*, 539 F.3d 1073, 1084 (9th Cir. 2008).

to be free to move once he handcuffed.¹⁷¹ The second factor, whether the suspect was restrained by physical force, clearly falls in favor of custody.¹⁷² The third factor, whether the suspect was isolated from others, likely falls in favor of custody.¹⁷³ Perhaps not in a physical sense, but most people who are handcuffed would likely feel isolated from others who are not handcuffed, even if they were sitting right next to him. The fourth factor, whether the suspect was informed he was free leave or terminate the interview, as noted above, also likely falls in favor of custody because it is unlikely that a suspect who is handcuffed is told he is free to leave.¹⁷⁴

The above analysis shows that in a practical sense, there should be very few situations in which the outcome of a custody determination would be altered by a bright line rule in favor of handcuffing automatically creating a custodial situation.

C. Implementing the Bright Line Rule

There is no situation where it is necessary to handcuff a suspect without immediately thereafter providing him with his *Miranda* rights before any questioning occurs. In a situation where there is a threat to public safety, police officers would still have the ability to utilize the “public safety exception” set forth in *Quarles*. In these situations where the need for answers greatly outweighs the need for the Fifth Amendment’s protections, officers are permitted to question a suspect without first *Mirandizing* him.¹⁷⁵ In any situation other than a public safety exception, police officers have the time to ensure an individual understands his rights before he makes any statements.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *New York v. Quarles*, 467 U.S. 649 (1984).

For example, in *United States v. Reese*, police went to execute an arrest warrant for defendant at his mother's residence.¹⁷⁶ Police observed three cars in the driveway, and defendant "peeking through the blinds" before he answered the door.¹⁷⁷ When defendant finally answered the door, he was handcuffed and asked 1) if there was anyone else in the house and 2) if there were any weapons in the house.¹⁷⁸ Defendant told police that there was one other person in the house, and a shotgun under the couch cushions.¹⁷⁹ Defendant was subsequently read his *Miranda* rights and taken to be interviewed by the FBI.¹⁸⁰ Defendant was convicted of being a felon in possession of a firearm, and argued on appeal that his statement should have been suppressed because he was not apprised of his *Miranda* rights before telling them where the gun was.¹⁸¹ The Sixth Circuit held defendant's statement was admissible, because the police were justified in asking him whether there were any other people or weapons in the house, under the public safety exception.¹⁸² This case is a perfect example of how police are able to ask defendants questions after handcuffing them to assure their safety under the public safety exception, but any questioning done after threats are eliminated require *Miranda* rights to be provided.

Acknowledgement should to be given that handcuffing a suspect for an officer's own safety, or for fear of flight, is a legitimate need in some situations. Officers are frequently put in situations where they must do whatever they can to eliminate the danger to themselves, particularly when they are with a suspect or suspects alone. However, immediately after handcuffing the suspect, that risk is eliminated. At that point, there is no immediate need for the

¹⁷⁶ *United States v. Reese*, 509 F. App'x 494, 497 (6th Cir. 2012).

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 501.

¹⁸² *Reese*, 509 F. App'x at 502.

officer to question the suspect without first providing him with this *Miranda* rights, a task that is neither cumbersome nor time consuming. If the only reason for failing to provide a suspect with *Miranda* rights is the fear that he will not be as willing to respond to questions, this is not a good enough reason to deny an individual his Constitutionally protected rights.

IV. CONCLUSION

Conflicting application among the circuit courts of the handcuffing factor in a *Miranda* custody analysis demonstrates a problem with the current standard. Courts' considering a suspect being handcuffed to differing degrees has created inconsistency in custodial determinations on the federal level. If custody is determined using an objective reasonable person standard, findings of custodial situations involving handcuffs should be uniform among courts. Although the determination of custody is often a fact-sensitive analysis requiring the totality of the circumstances to be considered, if a suspect is handcuffed, his custody should no longer be considered in a "totality of the circumstances" analysis. An objective reasonable person in a suspect's position, upon being handcuffed, would feel that he is "deprived of his freedom of action" and that there is a "restraint on [his] freedom of movement of the degree associated with a formal arrest."¹⁸³ The bottom line is expressed perfectly by the Second Circuit: "a reasonable person finding himself placed in handcuffs . . . would ordinarily conclude that . . . he was restrained to a degree normally associated with formal arrest and, therefore, in custody."¹⁸⁴ To continue allowing handcuffing to be considered as just one factor in a custody determination is to allow our Constitutional rights to be violated.

¹⁸³ *Miranda v. Arizona*, 384 U.S. 436, 444 (1966); *California v. Beheler*, 463 U.S. 1121, 1125 (1983).

¹⁸⁴ *United States v. Newton*, 369 F.3d 659 (2d Cir. 2004).